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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

**STATE AUTO PROPERTY & CASUALTY)
INSURANCE COMPANY,)**

Plaintiff,)

v.)

**KIN, INC. formerly known as KOHL'S)
ILLINOIS, INC. doing business as KOHL'S)
#174, a foreign corporation, KARLA)
MASCARI and RICHARD MASCARI,)**

Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT

Now comes the Plaintiff, State Auto Property & Casualty Insurance Company, by its attorney, Robert Marc Chemers of Pretzel & Stouffer, Chartered, and for its Complaint for Declaratory Judgment against the Defendants, KIN, Inc. formerly known as Kohl's Illinois, Inc. doing business as Kohl's #174, Karla Mascari and Richard Mascari, alleges the following:

JURISDICTION

1. The jurisdiction of this Court is premised upon 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs in this action seeking a declaration as to insurance coverage.

VENUE

2. Venue is premised upon 28 U.S.C. § 1391 as two of the three Defendants are residents of this District and the transaction or occurrence forming the basis of this action occurred in this District.

THE PARTIES

3. State Auto Property & Casualty Insurance Company (“State Auto”) is an insurance corporation incorporated in the State of Iowa, maintains its principal place of business in Columbus, Ohio, and is licensed to and which does transact insurance business in the State of Illinois.

4. KIN, Inc. formerly known as Kohl’s Illinois Inc. doing business as Kohl’s #174 (“Kohl’s”) is a Nevada corporation with its principal place of business in Menomonee Falls, Wisconsin, which owned and operated a department store in Machesney Park, Illinois.

5. Karla Mascari and Richard Mascari (“the Claimants”) are the plaintiffs in an action pending against Kohl’s, who are nominal parties to the extent that they may be interested in this declaratory judgment action and who have been joined herein solely to be bound by the judgment rendered in this cause although no specific relief is sought against either of them. In the event that the Claimants stipulate and agree to be bound by the judgment entered in this cause, then State Auto will seek to voluntarily dismiss each of them from this action. The Claimants are residents and citizens of the State of Illinois.

THE INSURANCE POLICY

6. State Auto issued its policy of Businessowners Liability insurance numbered BOP2889628-02 to LCU Properties, Inc. (“LCU”) as named insured for the policy period of August 15, 2018 to August 15, 2019. A true and correct copy of the State Auto policy of insurance is attached hereto, made a part hereof and is marked as Pleading Exhibit A (“BOP policy”).

THE ADDITIONAL INSURED ENDORSEMENT

7. The State Auto BOP policy issued to LCU contains an additional insured endorsement, which endorsement is a part of Pleading Exhibit A, and which endorsement provides, in part, as follows:

ADDITIONAL INSURED - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENTS

* * * * *

2. **Section II – Who Is An Insured** is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract or written agreement, that such person or organization be added as an additional insured on your policy. * * *.

THE SNOW REMOVAL AND SALTING AGREEMENT

8. LCU entered a Snow Removal Service Agreement with Divisions, Inc. to perform certain work including snow removal and salting at the Kohl’s department store located at 10153 North Second Street in Machesney Park, Illinois. In addition, LCU entered a Master Provider Agreement with Divisions, Inc. which is referenced in the Snow Removal Service Agreement. A true and correct copy of the Snow Removal

Service Agreement is attached hereto, made a part hereof and is marked as Pleading Exhibit B, and a true and correct copy of the Master Provider Agreement is attached hereto, made a part hereof and is marked as Pleading Exhibit C.

9. Specifically, the Master Provider Agreement between LCU and Divisions, Pleading Exhibit C, provided, in part, that LCU was to name Divisions as an additional insured on its policy of insurance, and that LCU was to name as additional insured “the owner of the project” which was a reference to Kohl’s.

THE UNDERLYING LITIGATION

10. The Claimants filed suit against Kohl’s and others for damages sustained by Karla Mascari, who was allegedly injured on February 10, 2019 as a result of a slip-and-fall while walking in the parking lot of the Kohl’s department store in Machesney Park, Illinois, and her husband, Richard Mascari, seeks damages for his claimed loss of consortium. A true and correct copy of the Complaint filed by the Claimants under Cause No. 21 L 38 in the Circuit Court of the 17th Judicial Circuit, Winnebago County, Illinois, is attached hereto, made a part hereof and is marked as Pleading Exhibit D, however, the action pends in this Court under Cause No. 21 C 50091 as it was removed to this Court by Kohl’s on March 1, 2021.

11. An insurer of Kohl’s tendered to State Auto Kohl’s defense for the action filed by the Claimants.

12. State Auto rejected the tender of Kohl’s defense as Kohl’s is not an “insured” on the State Auto policy issued to LCU for the reasons herein stated.

COUNT I
(DECLARATORY JUDGMENT RE: KOHL'S IS NOT AN INSURED)

13. State Auto adopts and repeats the allegations of ¶¶ 1 through 12 as and for ¶ 13 hereof as though the same were fully set forth herein.

14. State Auto contends that it has no duty or obligation to defend Kohl's in the action filed against it by the Claimants under the State Auto BOP policy issued to LCU for the reason that the additional insured endorsement to the State Auto BOP policy extends "insured" status "to * * * any * * * organization for whom you [LCU] are performing operations when you and such * * * organization [Kohl's] have agreed in a written contract or written agreement that such * * * organization be added as an additional insured on your [LCU's] policy."

15. LCU, the State Auto named insured, did not agree with Kohl's in a written contract or written agreement that it must add Kohl's as an additional insured on a policy of liability insurance as required by the additional insured endorsement to the State Auto BOP policy, and there is no written contract or written agreement between LCU and Kohl's, but between LCU and Divisions.

16. The above contentions of State Auto are, on information and belief, denied by Kohl's which, in turn, contends that State Auto provides coverage for Kohl's for the action filed by the Claimants. State Auto, in turn, denies the contrary contentions of Kohl's and each of them.

17. By reason of the foregoing, an actual and justiciable controversy exists between the parties and each of them, which may be determined by a judgment or order

of this Court. Pursuant to the terms of 28 U.S.C. §§ 2201 and 2202, this Court has the power to declare and adjudicate the rights and liabilities of the parties hereto under the terms and provisions of the BOP policy of insurance referred to herein and to adjudicate the final rights of the parties and to give such other and further relief as may be necessary to enforce the same.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, State Auto Property & Casualty Insurance Company, prays that the Court enters judgment finding and declaring the rights of the parties as follows:

AS TO COUNT I:

- A. That State Auto Property & Casualty Insurance Company is not liable under its policy of insurance numbered BOP2889628-02 to defend KIN, Inc. formerly known as Kohl's Illinois, Inc. doing business as Kohl's #174 in Cause No. 21 C 50091 ending in the United States District Court for the Northern District of Illinois, Western Division, on removal from the Circuit Court of the 17th Judicial Circuit, Winnebago County, Illinois, filed under Cause No. 21 L 38.
- B. That the Court grant State Auto Property & Casualty Insurance Company such other and further relief as the Court deems fit and just under the circumstances.

C. That State Auto Property & Casualty Insurance Company be awarded and have and recover its just and reasonable costs incurred herein and have execution issue therefor.

Respectfully submitted:

/s/ Robert Marc Chemers

Robert Marc Chemers

Bar No. 0431508

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